Supreme Court, U.S.
FILED
DEC 30 1986
JOSEPH F. SPANIOL, JR.
CLERK

86 - 1233

No. -

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

In the Matter of the Estate of
WILLIAM KUNTZ

WILLIAM KUNTZ, III

—v.—

WINTERS NATIONAL BANK AND TRUST COMPANY,
ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT—MONTGOMERY COUNTY, OHIO

WILLIAM KUNTZ, III
Pro Se
11 N. Pearl Street 702
Albany, New York 12207
(518) 434-1990

(For Further Appearances See Reverse Side of Cover)

James T. Lynn, Jr.
Attorney for the Estate
The Old Post Office
120 West Third Street
Dayton, Ohio 45402-0910
(513) 224-1981

Robert B. Crew
Joseph P. Buchanan
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Dayton, Ohio 45402
(513) 223-6211

Thomas H. Pyper
Attorney for Paul W. Heintz
2100 First National Bank Plaza
Dayton, Ohio 45402
(513) 223-6211

QUESTIONS PRESENTED FOR REVIEW

1. That the appellant, here petitioner William Kuntz III, a beneficiary to the estate and the displaced co-executor has preserved his rights as to the adverse decisions of the probate court by appeals of those adverse decisions and is thus not barred from the relitigation of any proper claim in federal court.

2. That the appellant, here petitioner William Kuntz III, is not conclusively bound by the decision of the state probate court as to federal estate tax controversy where such decisions have been obtained by the fraud and collusion of the defendant(s), TRUSTEE, WINTERS NATIONAL BANK AND TRUST COMPANY together with others.

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TABLE OF AUTHORITIES

Commissioner of Internal Revenue, Petitioner v. Estate of Herman Bosch, Deceased 387 US 456, 18 L.Ed.2d 886, 87 S.Ct.1776 .....

Federated Department Stores, Inc., et al., Petitioners v. Marilyn Moitie and Floyd R. Brown, Etc. 452 U.S. 394, 69 L.Ed. 103, 101 S.Ct.2424 .....

Second National Bank of New Haven, Petitioner v. United States, 387 US 456, 18 L.Ed. 886, 87 S.Ct.1776 .....

STATEMENT OF GROUNDS FOR JURISDICTION

1. The decision of the Probate Court rendered on 19th of May, 1983 which will be included in the supplemental index.

2. The decision for the Court of Appeals rendered on the 26th of July, 1986 which will be included in the supplemental index.

3. The decision of the Supreme Court of Ohio declining jurisdiction rendered on October 1, 1986 which will be included in the supplemental appendix.

STATUTORY PROVISIONS

Internal Revenue Code

PRECEDENT CASE LAW

Erie R. Co. v. Tompkins 301 F.2d 231.

STATEMENT OF THE CASE

This is the second petition for a writ of certiorari from the administration of the estate of William Kuntz, Sr. late of Dayton Ohio, the first being 465 U.S. 1080, 79 L.Ed.2d 763, 104 S.Ct.1443 rehearing denied 467 U.S. 1257, June, 1984. The appeal stems from the second accounting of the present administrator, Winters National Bank and Trust Company to the Probate Court of Montgomery County, Ohio, In that accounting: the administrator sets forth tax payments of some $500,000, fee payments to itself and others of some $100,000 and sales of shares of closely held stock of the Peter Kuntz Company of Dayton Ohio and its subsidiaries without appraisal.

It is admitted by direct testimony in a hearing before a visiting judge that there were more favorable tax treatments available to the estate than those used by the administrator, Winters National Bank and Trust Company, which would have reduced the federal estate tax by a considerable amount.

It was further admitted that the fee's submitted and approved by the now retired probate judge was done on the same day and without notice of any kind.

It was further put into evidence that shares of stock in the estate were sold without appraisal back to the Peter Kuntz Company for whom the other co-executor, now resigned, in favor of Winters National Bank and Trust Company, was employed.

It was admitted that the estate of William Kuntz, Sr. did own the single largest block of stock of the common shares of the Peter Kuntz Company.

It was established that the valuable residential real estate of the deceased was sold on the first offer, accepted in one day and that the estate accepted a mortgage at a low rate of interest.

It was presented that a large portfolio of tax exempt bonds was sold at well below face value.

It was established that the trustee-administrator lent funds held in trusts for the payment of federal estate taxes to the estate for the payment of it's fees and the fees of it's counsel among others.

It was established that the trustee-administrator together with counsel for the trustee-administrator did participate in the sale of the mortgage company and saving and loan of whom the deceased was chairman, at a loss to the estate and the Peter Kuntz Company, and that included in the sharing of some $13,000,000 in wire transfer payments of loan payments from The Third National Bank And Trust Company.

ARGUMENT

The petitioner for certiorari should be granted on a basis of individual justice. In preparing for the filing of the petition I, William Kuntz III, did review the index of cases of the Supreme Court from the early 1920's through the present and with care those cases involving succession and estate taxes. It is quite clear that the court no longer cares to hear probate matters to any great extent with the recent exception of the estate of Howard Hughes.

Civil and criminal rights have for the most taken the docket of court and in effect left little consideration for property rights and even less for those who might obtain property by inheritance.

This may be property so, even our constitution speaks to the distaste for foreign titles of nobility, which brings to mind vast transactions, keeping segments of the populace aloof from the general public.

This is not yet a tax case, petitioner does not complain of the conduct of the government in collection of estate tax, even though the tax rate on this estate is the highest in the last several years. His complaint is directed to the conduct of the trustee, a national bank, whose charter and trust powers flow from the federal government.

Petitioner has complained that the trustee has ordered the affairs of this estate to suit its goals, for it's ease of administration. When confronted with the direct question as to tax *overpayment* the response goes "Oh, well we were too late to correct that" not too late to collect $100,000 in fees for itself and the cronies however.

It is not too hard to comprehend that a large national bank whose business in part is to administrate large numbers of estates has a great deal of influence in the probate court, much more that those who only have one or two matters come to court in a lifetime, thus mischief is given root and as in this case

gives rise to an unaltered mind-set that the affairs of estates may be ordered to gain a profitable business for the bank, further that a probate bar will be nurtured and rush to curry favor of the bank doing what a general practitioner would avoid. Those charged in the federal government with overseeing the conduct of banks and correcting the wrongdoings that exist are so cozy with their charges that all they presently seem to do is keep count of the banks that fail, and employ large numbers of signpainters to reletter signs of failed institutions to newer institutions which in turn wait their own demise.

The precept of integrity and prudent administration seems to have been lost, the court may take notice that the Peter Kuntz Company of Dayton, Ohio of which the bulk of the estate was retained in the form of common stock has now failed and gone into liquidation at an almost total loss to appellant.

What petitioner seeks is the just remand and review of the conduct of the trustee-administrator and the chance to recover a substantial overpayment of federal estate tax without further delay.

Respectfully submitted,

WILLIAM KUNTZ III
Pro Se

Albany, New York
December 29, 1986

86 - 1233

No. -

Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1986

In the Matter of the Estate of
WILLIAM KUNTZ

WILLIAM KUNTZ, III

—v.—

WINTERS NATIONAL BANK AND TRUST COMPANY, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND DISTRICT—MONTGOMERY COUNTY, OHIO

SUPPLEMENTAL APPENDIX

WILLIAM KUNTZ, III
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11 N. Pearl Street 702
Albany, New York 12207
(518) 434-1990

(For Further Appearances See Reverse Side of Cover)

JAMES T. LYNN, JR.
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THOMAS H. PYPER
Attorney for Paul W. Heintz
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Dayton, Ohio 45402
(513) 223-6211

Dated: January 23, 1987
New York City, New York

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The Supreme Court of Ohio

Columbus

1986 TERM

To wit: October 1, 1986

In re Estate of William Kuntz. : Case No. 86-649

: ENTRY

Upon consideration of the motion for an order directing the Court of Appeals for Montgomery County to certify its record it is ordered by the Court that said motion is overruled.

COSTS:

Motion Fee, $20.00, paid by William Kuntz, III.

FOR YOUR INFORMATION ONLY
NOT FOR FILING

/s/ Frank D. Celebrezze
FRANK D. CELEBREZZE
Chief Justice

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this date _____.

JAMES WM. KELLY CLERK

/s/ Daniel J. Crowley DEPUTY

In the

Court of Appeals of Montgomery County, Ohio

IN THE MATTER OF: :

THE ESTATE OF WILLIAM KUNTZ, SR. : CASE NO. CA 8637

Deceased ..... FINAL ENTRY

Pursuant to the opinion rendered by this court on the 26th day of February, 1986, the judgment of the trial court is affirmed.

/s/ Joseph D. Kerns
JOSEPH D. KERNS, Judge

/s/ William H. Wolff, Jr.
WILLIAM H. WOLFF, JR., Judge

/s/ R.K. Wilson
RICHARD K. WILSON, Judge

cc: James T. Lynn
Thomas H. Pyper
Joseph P. Buchanan
James R. Kirkland

Filed
Court of Appeals
1986 Mar 3 PM12:29
Montgomery County

COURT OF APPEALS
SECOND APPELLATE DISTRICT

A-3

In the

Court of Appeals of Montgomery County, Ohio

Probate Division

Case No. CA 8637

In the Matter of the Estate of:

WILLIAM KUNTZ, SR., Deceased

OPINION

Rendered on the 26th day of February, 1986.

JAMES T. LYNN, 1400 One First National Plaza, Dayton, Ohio 45402
Attorney for Estate of William Kuntz, Sr., Deceased

THOMAS H. PYPER, 2100 One First National Plaza, Dayton Ohio 45402

JOSEPH P. BUCHANAN, 2580 Kettering Tower, Dayton, Ohio 45423
Attorney for Winters National Bank & Trust Co.

JAMES R. KIRKLAND, 518 - 111 West First Street, Dayton, Ohio 45402
Attorney for Appellant, William Kuntz, III

PER CURIAM:

The appellant, William Kuntz, III has appealed from the order of the Montgomery County Court of Common Pleas, Probate Division, overruling his objections to the second partial account

filed by appellee, Winters National Bank & Trust Co. n.k.a. Bank One, Administrator do bonis non with will annexed.

In a prior appeal in case No. 7355 we rendered an opinion on March 19, 1983 affirming the order of the trial court removing the appellant as co-executor and accepting the resignation of the other co-executor. Many of the back ground facts in this case are set forth in our prior opinion. No useful purpose would be served in repeating those facts in this opinion.

On April 14, 1982, appellee filed a partial account encompassing the accounting period prior to March 25, 1982. Appellant filed no objections to this account.

On January 11, 1983, appellee filed a second partial account for the accounting period between March 26, 1982 and November 16, 1982. On February 22, 1983, appellant filed 15 objections to the second account.

A hearing on the objections was conducted on April 19, and 20, 1983. On September 28, 1983, the Probate Division overruled 14 objections and sustained one objection which is not pertinent to any of the issues in this appeal.

The appellant has appealed asserting eight assignments of error.

The first is:

THE COURT WAS IN ERROR FOR LIMITING THE SCOPE OF THE OBJECTIONS TO THE ACCOUNT

Appellant states that the trial court erred in sustaining appellee's objection to matters regarding the first account contending that he did not receive notice of the filing of the first account.

The record reflects the fact that the appellant at least had notice of the first account when he received notice of the filing of the second account designated "Fiduciary's Account, Second."

We find no abuse of discretion by the trial court in limiting the scope of appellant's examination to the second account. The first assignment of error is overruled.

In the appellant's last seven assignments of error he in effect contends that the findings of facts and order of the trial court are against the weight of the evidence.

We think the record discloses sufficient credible evidence to support the order of the trial court overruling the appellant's exceptions to the second account. *C.E. Morris Co.* v. *Foley Construction Co.* (1978), 54 Ohio St. 2d 279. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St. 3d 77.

The judgment is affirmed.

KERNS, J., WOLFF, J., AND WILSON, J., CONCUR.

Filed
Court of Appeals
1986 Feb 26

Montgomery
County

In the

Common Pleas Court of Montgomery County, Ohio

Probate Division

Case No. 231191-300-183

In the Matter of the Estate of:

WILLIAM KUNTZ, Deceased

ORDER

This cause came on to be heard on the objections to partial account filed herein by William Kuntz, III. The Court, upon consideration of the evidence adduced at the hearing on said objections on April 19 and 20, 1983, and post hearing memorandums, submitted by counsel for the parties, entered its Findings of Fact and Conclusions of Law herein on June 13, 1983, finding that the objections to the account, with the exception of Objection No. 10, were without merit and further finding that the fiduciary's second account filed January 1, 1983, to be in all respects, correct and the same was ordered approved, except for Objection No. 10.

It is, therefore, by the Court, ORDERED that the objections of William Kuntz, III to the second account be and the same are hereby overruled and said second account is hereby approved in all respects except for the objection set forth in Objection No. 10.

With respect to Objection No. 10, the evidence shows that William Kuntz, III has possession of the deceased's 1969 Lincoln automobile and a prior accounting shows said automobile

distributed to William Kuntz, III; however, the certificate of title to said automobile is in the name of the estate and has not been transferred to William Kuntz, III. It is, therefore, further ORDERED that the Winters National Bank and Trust Co., Administrator D.B.N. W.W.A. of the Estate of William Kuntz secure a duplicate certificate of title if the original cannot be found, execute an assignment thereof to William Kuntz, III and tender the assigned certificate of title to William Kuntz, III so that he may secure a new certificate of title in his name. It is further ORDERED that said fiduciary file its report herein that it has complied with the foregoing Order.

_____

JUDGE

APPROVED:

_____

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Attorney for William Kuntz, III

_____

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Dayton, Ohio 45402

Attorney for Paul W. Heintz

Filed

Sep 28, 1986
3:53 P.M.

Montgomery County

In the

Common Pleas Court of Montgomery County, Ohio

Probate Division

Case No. 231191-300-593

In the Matter of the Estate of:

WILLIAM KUNTZ, Deceased

FINDINGS OF FACT CONCLUSIONS OF LAW

Objections to the partial Account have been filed by William Kuntz III and were heard April 19 and 20, 1983. Further the Court has the benefit of written agreements submitted by counsel for the parties.

The first five objections relate to the fees changed by the fiduciaries and their counsel. The fiduciaries fees, of course, are controlled by statute, except to the extent that extraordinary services may have been performed. Attorney fees are controlled by several factors including but not limited to the Courts guidelines and the attorneys record of time. It is the practice of this Court in the event of objection to fees, to set the matter for hearing and take evidence as to the reasonableness of the fees. The Court has now heard evidence as to the work accomplished and the time required for this work by each fiduciary and attorney involved. The work involved was complicated and was made moreso by the lack of cooperation by the Objector, Mr. Kuntz. The evidence was clear that extraordinary services were rendered, which were necessary, were valuable to the estate and that fees requested for the same are more than reasonable.

Separate written statements for fees have been submitted by Winters National Bank, Mr. Heintz and Mr. Lynn which the Court hereby finds reasonable and are allowed as submitted.

OBJECTION NO. 6

Objector alleges that the deceased's real estate located at 4340 Delco Dell Road, Dayton, Ohio, was sold on terms and conditions that were not in the best interests of the estate or the trust beneficiaries. He alleges the sale price was insufficient and that the note and mortgage taken for the balance of the purchase price carried an interest rate several points under the market.

The Court has heretofore found that it was in the best interests of the estate that the property be sole.

The inventory and appraisement signed and filed by the Objector, while acting as a co-executor, stated the property had a fair market value of $165,000.00 in the early summer of 1980. The property was sold in the fall of 1981 for $175,000.00. The terms were $75,000.00 cash, with a note and mortgage for $100,000.00 carrying interest at 13% payable in four years with monthly payments of $1,000.00.

Objectors witness, Mr. McCosh, a licensed broker, testified that he was familiar with the area; that it was an expensive area; that sales in 1980 and 1981 were slow and very few properties sold during this time. On cross examination he agreed that mortgage loans were hard to get and that some reduction in the interest rates was one devise used during this period to stimulate and sell real estate.

The Court cannot find that either the price obtained for the property or the terms extended to the purchaser were against the best interests of the estate or trust beneficiaries.

OBJECTION NO. 7

The evidence was that the Administrator sold decedent's residence taking back a purchase money mortgage for $100,000.00 with interest at 13%.

Thereupon the mortgage was sold to the first in order to raise sufficient cash to pay taxes and expenses of administration. There is no question but that the transaction was in keeping with the fiduciary's powers. There is no evidence that the transaction was improper and in fact appears to have been necessary.

The Court finds this objection to have no merit.

OBJECTION NO. 8

Objector alleges that the Winters National Bank, Trustee, failed to consider splitting the property at 4340 Delco Dell Road prior to sale.

Testimony was that the house was situated on approximately 1.44 acres of land and appraised at $175,000.00. There is no evidence as to whether zoning restrictions would permit subdivision. There is no evidence as to whether such subdivision would detract from the appraised value.

The Court is of the opinion this suggestion is highly speculative and there is no evidence that subdivision would benefit the estate and in fact might prove detrimental.

OBJECTION NO. 9

Objector alleges that the Winters National Bank sold shares of stock belonging to the deceased without proper review.

The objections do not state and there is no evidence that any sales of shares of stock were a loss to the estate. The evidence was in fact that shares of the Peter Kuntz Company were unlisted and had no market value. They were, however, subject to a company resolution and agreement to purchase them at a stated price which the fiduciaries took advantage of. Objector, while acting as co-exectuor, failed to act in relation to the company resolution and offer and this was part of the basis for his removal.

The Court can find no loss to the estate and no basis for this objection.

OBJECTION NO. 10

Objector alleges that title to the deceased's 1969 Lincoln automobile has not been transferred to him as reflected by a prior accounting.

The evidence indicates a clerical error was made when the car was transferred from the name of the deceased to the estate. This had to do with the serial number. The real thrust of this objection appears to be that there has been unnecessary delay in transfer of the title.

The evidence shows that the car was shown as having been distributed to William Kuntz III in the final account of the co-executors. Winters was not charged with this asset.

The Court suggests that Winters expedite this matter by causing transfer to Mr. Kuntz.

OBJECTION NO. 11

Objector alleges Winters National Bank failed to avail itself of favorable tax treatment under IRS regulations, in that tax could have been deferred at a very low rate of interest.

The evidence revealed the estate did not qualify for deferred tax payment, as alleged by Objector, and further that even had it qualified, deferment would not have been wise since the interest rate on deferred taxes would have been far in excess of 4%.

OBJECTION NO. 12 AND 13

Objector alleges the account does not properly state interest and principal amounts held by the estate.

Testimony revealed that all cash held by the estate was invested and that the return was in excess of the Federal Bill rate. Evidence was presented as to the yield month by month during 1981.

The Court finds the accounting method to be satisfactory and that estate funds were properly invested at an adequate level of return.

OBJECTION NO. 14

Objector alleges the executor sold estate securities for no proper purpose.

The evidence is to the contrary. Sale of Peter Kuntz Company stock was necessary to repay a loan from the company to William Kuntz. The balance was used to pay taxes.

OBJECTION NO. 15

Objector alleges that Winters National Bank acted improperly as Trustee in the sale of certain securities to the detriment of the estate.

Evidence presented showed clearly that the transaction referred to by Objector had no relation to this estate or trust and that Winters National Bank was not acting as Trustee in any proceedings concerning sale of North Central Mortgage Company.

The Court finds this objection without merit.

In summary, except for Objection No. 10, the Court finds the Fiduciary's Second Account filed January 1, 1983, to be, in all respects, correct and the same is hereby ordered approved.

/s/ James B. West
James B. West, Judge

cc: Counsel of Record

PROBATE COURT OF MONTGOMERY COUNTY, OHIO

STATE OF: William Kuntz, Deceased

Case No. 231191 Docket 290 Page:

Approved:

Journal:

FINAL FIDUCIARY'S ACCOUNT

[For Executors and all Administrators]

The fiduciary offers an account of his trust, given below and on the attached itemized statement of receipts and disbursements, and accompanying vouchers. The fiduciary says that to his knowledge the account is correct, and asks that it be approved and settled.

[Check one of the following four paragraphs]

☐ This is a partial account. A statement of the assets remaining in the fiduciary's hands is attached.

☐ This is a final account. A statement of the assets remaining in the fiduciary's hands for distribution to the beneficiaries is attached.

☐ This is a distributive account, and the fiduciary asks to be discharged from his trust upon its approval and settlement.

☒ This is a final and distributive account, and the fiduciary asks to be discharged from his trust upon its approval and settlement.

[Complete if this is a partial account, or if one or more accounts have previously been filed in the estate] The period of this account is from

January 1, 1981 to April 30, 1981

[Complete if applicable] Accounts previously filed in the estate, the accounting periods, and the fiduciary and attorney fees paid for each period, are as follows:

Date Filed: March 4, 1981

Accounting Period: March 11, 1980 to Dec. 31, 1980

Fiduciary Fees Paid: $14,000.00

Attorney Fees Paid: $10,000.00

This account is recapitulated as follows:

RECEIPTS		
Personal Property of decedant [not sold]		$932,210.41
Proceeds from redemption of Reading Pa Municipal Bond		20,000.00
Proceeds from sale of personal property		—0—
Real estate of decedent [not sold]		165,000.00
Proceeds from sale of real estate		—0—
Income		26,953.15
Other Receipts		—0—
Total receipts		$1,144,163.56
DISBURSEMENTS		
Fiduciary fees [this accounting period]	$ —0—	
Attorney fees [this accounting period]	—0—	
Other administration costs and expenses	1,325.65	
Debts and claims against estate	—0—	
Ohio and federal estate taxes	—0—	
Personal property distributed in kind	500.00	
Real property transferred	—0—	
Other distributions to beneficiaries	15,340.00	
Other disbursements (Bank service charges	12.00	
Distribution to Winters National Bank as Administrator De Bonis Non With Will Ann.	$1,126,985.91	1,144,163.56

BALANCE REMAINING IN
FIDUCIARY'S HANDS ..... $ -0-

(s)

William Kuntz, III Fiduciary Paul W. Heintz

ENTRY SETTING HEARING AND ORDERING NOTICE

The Court sets at o'clock .M. as the date and time for hearing the above account, and orders notice of the hearing to be given as provided by law and the Rules of Civil Procedure.

Date Neal F. Zimmers, Probate Judge

PROBATE COURT OF MONTGOMERY COUNTY, OHIO

ESTATE OF: William Kuntz, Deceased

Case No. 231191 Docket 300 Page: 183

Approved: May 25, 1982

Journal: 964 245

FIDUCIARY'S ACCOUNT

–FIRST ACCOUNTING–

[For Executors and all Administrators]

The fiduciary offers an account of his trust, given below and on the attached itemized statement of receipts and disbursements, and accompanying vouchers. The fiduciary says that to his knowledge the account is correct, and asks that it be approved and settled.

[Check one of the following four paragraphs]

☑ This is a partial account. A statement of the assets remaining in the fiduciary's hands is attached.

☐ This is a final account. A statement of the assets remaining in the fiduciary's hands for distribution to the beneficiaries is attached.

☐ This is a distributive account, and the fiduciary asks to be discharged from his trust upon its approval and settlement.

☐ This is a final and distributive account, and the fiduciary asks to be discharged from his trust upon its approval and settlement.

[Complete if this is a partial account, or if one or more accounts have previously been filed in the estate] The period of this account is from

5/15/81 to 3/26/82

[Complete if applicable] Accounts previously filed in the estate, the accounting periods, and the fiduciary and attorney fees paid for each period, are as follows:

Date Filed: Accounting Period:

Fiduciary Fees Paid: Attorney Fees Paid:

This account is recapitulated as follows:

RECEIPTS

Personal Property of decedant [not sold]	$ 926,471.69
Proceeds from sale of personal property	1,669,400.14
Real estate of decedent [not sold]	165,000.00
Proceeds from sale of real estate	175,000.00
Income	96,536.44
Other Receipts	177,568.80
Total receipts	$3,209,977.07

DISBURSEMENTS

Fiduciary fees [this accounting period]	$	
Attorney fees [this accounting period]	10,000.00	
Other administration costs and expenses	15,670.80	
Debts and claims against estate	96,611.51	
Ohio and federal estate taxes	200,000.00	
Personal property distributed in kind		
Real property transferred		
Other distributions to beneficiaries	96,453.50	
Other disbursements	1,910,878.06	
Total disbursements	$	2,329,613.87
BALANCE REMAINING IN FIDUCIARY'S HANDS		$ 880,363.20

s/ _____ s/ _____

ATTORNEY Fiduciary VICE PRESIDENT

ENTRY SETTING HEARING AND ORDERING NOTICE

The Court sets at o'clock .M. as the date and time for hearing the above account, and orders notice of the hearing to be given as provided by law and the Rules of Civil Procedure.

_____ _____

Date Neal F. Zimmers, Probate Judge

PROBATE COURT OF MONTGOMERY COUNTY, OHIO

STATE OF: William Kuntz, Deceased

No. 231191 Docket 300 Page: 183

Approved:

Journal:

FIDUCIARY'S ACCOUNT

SECOND

[For Executors and all Administrators]

The fiduciary offers an account of his trust, given below and on the attached itemized statement of receipts disbursements, and accompanying vouchers. The fiduciary says that to his knowledge the account is correct, and asks that it be approved and settled.

[Check one of the following four paragraphs]

☒ This is a partial account. A statement of the assets remaining in the fiduciary's hands is attached.

☐ This is a final account. A statement of the assets remaining in the fiduciary's hands for distribution to the beneficiaries is attached.

☐ This is a distributive account, and the fiduciary asks to be discharged from his trust upon its approval and settlement.

☐ This is a final and distributive account, and the fiduciary asks to be discharged from his trust upon its approval and settlement.

[Complete if this is a partial account, or if one or more accounts have previously been filed in the estate] The period of this account is from

3/26/82 to 11/16/82

[Complete if applicable] Accounts previously filed in the estate, the accounting periods, and the fiduciary and attorney fees paid for each period, are as follows:

Date Filed: April 14, 1982 Accounting Period: 1st

Fiduciary Fees Paid: $0.00 Attorney Fees Paid: $10,000.00

***		***
Principal Cash on Hand		79.01
Income Cash on Hand		1.07
		$ 880,363.20

This account is recapitulated as follows:

RECEIPTS		
Personal Property of decedent [not sold]		$ —0—
Proceeds from sale of personal property		470,247.76
Real estate of decedent [not sold]		—0—
Proceeds from sale of real estate		—0—
Income		36,891.89
Other Receipts		204,361.36
Total receipts		$1,591,864.21
DISBURSEMENTS		
Fiduciary fees [this accounting period]	$24,684.32	
Attorney fees [this accounting period]	24,114.51	
Other administration costs and expenses	47.63	
Debts and claims against estate	—0—	
Ohio and federal estate taxes	184,631.44	
Personal property distributed in kind	598,309.76	
Real property transferred	—0—	
Other distributions to beneficiaries	55,090.11	
Other disbursements	704,882.35	
Total disbursements	$	1,591,760.12
BALANCE REMAINING IN FIDUCIARY'S HANDS		$ 104.09

WINTERS NATIONAL BANK AND TRUST, EXECUTOR OF THE ESTATE OF WILLIAM KUNTZ

BY: _____

_____ Attorney

Fiduciary
Vice President

ENTRY SETTING HEARING AND ORDERING NOTICE

The Court sets at o'clock .M. as the date and time for hearing the above account, and orders notice of the hearing to be given as provided by law and the Rules of Civil Procedure.

_____ _____

Neal F. Zimmers, Probate Judge

PROBATE COURT OF MONTGOMERY COUNTY, OHIO

STATE OF: William Kuntz, Deceased

Case No. 231191 Docket 290 Page:

RECEIPTS AND DISBURSEMENTS

[Attach to fiduciary's account]

Page _____ of _____ pages

Following is an itemized statement of receipts and disbursements by the fiduciary in the administration of his trust.

Item	Voucher No.	Value or Amount	Value or Amount
Assets remaining after Fiduciary's First Acctg.		$	$1,097,210.41
Income - Interest and Dividends			26,953.15
Redemption of Reading Pa Municipal Bond			20,000.00
TOTAL RECEIPTS			1,144,163.56
Winters National Bank, Trustee	1	7670.00	
Winters National Bank, Trustee	2	7670.00	
Harlan Monroe, household employee, (sick pay)	3	200.00	
Dayton Power & Light Company, service to 4340 Delco Dell Road	4	1125.65	

Distribution to Winters National Bank, as Administrator de bonis non with will annexed	5	1,126,985.91
William Kuntz, III, 1969 Lincoln		500.00
Bank service charges	---	12.00
TOTAL DISBURSEMENTS		1,144,163.56

* $1,097,210.41 is the value of the assets remaining after Fiduciary's First Account, reduced by the appraised value of the Reading Pa. Municipal Bond, which was redeemed during the second account period.

s/ Paul W. Heintz

William Kuntz, III,
Co-Executor

Paul W. Heintz,
Co-Executor

A-25

Case No. 231191

Docket: 290 Voucher No. 5

MONTGOMERY COUNTY PROBATE COURT

Dayton, Ohio May 18, 1981

RECEIVED OF Paul W. Heintz and William Kuntz, III, Co-Executors of the Estate of William Kuntz, the following assets.

Real estate located at 4340 Delco Dell Road	$165,000.00
Cash	38,121.22
Peter Kuntz Savings Participation Plan	25,000.00
6 U.S. Treasury Bills $60,000 face value - appraised value	39,987.69
7670 shares of the common stock of The Peter Kuntz Company - appraised value	613,600.00
1210 shares of the preferred stock of The Peter Kuntz Company - appraised value	54,450.00
1 share, Moraine Country Club	1,000.00
Stock in Peter Kuntz Company subsidiaries (appraised value) (See list attached)	5,912.00
Municipal Bonds (appraised value of those bonds not yet redeemed). See list attached.	183,915.00
TOTAL	$1,126,985.91

For: Distribution to Administrator De Bonis Non with Will Annexed

WINTERS NATIONAL BANK & TRUST COMPANY

By /s/ Trace B. Swisher

Trace Swisher, Trust Officer

Stock of Peter Kuntz Company subsidiaries

1 common share of Allen County Lumber & Supply Company	$300.00
1 common share of The Avenue Lumber & Supply Co.	300.00
1 common share of The Black River Lumber & Supply Co.	300.00
1 common share of The Brookville Lumber Company	300.00
1 preferred share of The Butler County Lumber Company	100.00
1 common share of Cambridge Lumber Company, Inc.	300.00
1 common share of Celina Lumber & Supply Company	300.00
1 preferred share of The Clark County Lumber Company	100.00
1 common share of The Fairborn Lumber Company	300.00
5 common shares of The Fostoria Lumber & Supply Co.	300.00
1 common share of The Klipstine Lumber & Supply Co.	300.00
1 common share of the Logan County Lumber & Supply Co.	300.00

Stock of Peter Kuntz Company subsidiaries
(continued)

1 common share of Losantville Lumber Company, In.c	300.00
19 common shares of Miller Kemper Lumber Company, Inc.	300.00
1 common share of North Central Mortgage Corporation	120.00
1 common share of North Central Mortgage Corporation	120.00
½ common share of North Central Mortgage Corporation	60.00
1 common share of St. Paris Lumber and Supply Co.	300.00
1 common share of The Peter Kuntz Lumber Company	300.00
1 common share of The Queen City Lumber Company	300.00
1 common share of The West Liberty Lumber Company	300.00
1 common share of The Western Ohio Development Company	300.00
1 common share of Union City Lumber & Supply, Inc.	300.00
1/9 common share of Scioto Savings Assn.	12.00
TOTAL	$5,912.00

MUNICIPAL BONDS

Lucas County Sanitary Bonds	$15,410.00
Oshkosh Wisconsin Bonds	17,500.00
Alabama Public Schools Bonds	25,761.00
Jefferson County Colorado Bonds	4,150.00
Hamilton County Ohio Bonds	8,580.00
Kettering Ohio Thorofare Bonds	8010.00
Akron, Ohio Street Improvement Bonds	8,375.00
Port Huron Michigan Lien Obligation	8,459.00
Celina Ohio Electric System Bonds	8,402.00
Pickering Schools Bonds	17,620.00
Maryland Department of Transportation Bonds	8,400.00
Ashland Ohio Waterworks Bonds	4,640.00
Pontiac Schools Bonds	8,372.00
Montgomery County Schools Bonds	7,902.00
Summit County, Ohio Bonds	8,202.00
Ohio Education Bonds	8,402.00
Cleveland County Park Bonds	7,300.00
Ohio Highway Series D Bonds	8,430.00
TOTAL	$183,915.00

In the

Common Pleas Court of Montgomery County, Ohio

Probate Division

Case No. 231191 Docket 290, Page 179

In the Matter of the Estate of:

WILLIAM KUNTZ, Deceased

APPLICATION FOR ALLOWANCE OF FEES

Winters National Bank and Trust Co., Administrator DBN WWA of the Estate of William Kuntz, deceased, files this Application for the Allowance of Fees to counsel and to a prior Executor and to the Administrator DBN WWA, and in support thereof, makes the following representations to the Court:

William Kuntz died testate on March 5, 1980, and on March 11, 1980, Paul W. Heintz and William Kuntz III were appointed Co-Executors of the Last Will and Testament of William Kuntz, deceased. Problems insued in the administration of the Estate, and it was impossible for the Executors to make progress in the administration of the Estate, and on September 11, 1980, Winters National Bank and Trust Co., as Trustee under Revocable Living Trust Agreement, entered into under date of July 1, 1975, and being the residuary devisee and legatee under the said Last Will and Testament, and for the protection of the beneficiaries of the Trust, filed application for the removal of the Executor, William Kuntz III. Shortly thereafter Paul W. Heintz tendered his conditional resignation as Co-Executor of the Estate. After hearing the matter, the Probate Court on May 1, 1981, ordered

the removal of William Kuntz III as an Executor and accepted the resignation of Paul W. Heintz and appointed Winters National Bank and Trust Co. as Administrator DBN WWA. Winters National Bank and Trust Co. was appointed Administrator DBN WWA on May 14, 1981 and proceeded with the administration of the Estate. In connection with the administration and the removal proceedings, this applicant secured the services of Cowden, Pfarrer, Crew & Becker as its counsel.

Working in conjunction with the counsel, the Administrator secured possession of the residence property owned by the deceased and secured a purchaser for the property and completed a sale of the property, completed previously contracted sale of preferred stock of the Peter Kuntz Company pursuant to existing agreements, disposed of other personal property, prepared, filed and paid Ohio Estate Tax and then notified Federal Estate Tax authorities that amendments were required in the Federal Estate Tax Return and thereafter, after lengthy negotiations, secured a reduction in certain values of Peter Kuntz Company stock owned by the deceased and as returned on the Federal Estate Tax Return, and secured a partial refund of tax paid. Clearance has been obtained and closing letters received in connection with the Federal Estate Tax and State Estate Tax. Applicant is in a position to conclude the administration of the Estate.

Applicant says that fees have been paid and claims have been made for fees by the following persons and in the following amounts:

Paul W. Heintz Executor Fees	$7,000.00
William Kuntz Executor Fees	$7,000.00
James T. Lynn Attorney's Fee	$10,000.00

The foregoing fees were paid by the prior Executors prior to the removal of William Kuntz III and the resignation of Paul W. Heintz.

Subsequent thereto, the following fee was paid:

James T. Lynn Attorney's Fee	$10,000.00

The following claims for fees have been filed with the Administrator:

Paul W. Heintz Executor's Fee	$ 4,684.32
Estabrook, Finn & McKee Attorneys for Paul W. Heintz	$ 6,935.16
James T. Lynn Attorney's Fee	$ 5,000.00
Winters National Bank and Trust Co. Administrator's Fee	$20,000.00
Robert B. Crew Attorney's Fee	$12,000.00

Applicant has attached hereto as exhibits the claims made for fees by the various claimants.

Applicant has computed the fees allowable by statute to an Executor or Administrator; they are in the sum of $30,000.00. Attorneys' Fees allowable by Probate Court without an order are computed in the sum of $28,500.00.

WHEREFORE, applicant Winters National Bank and Trust Co. Administrator DBN WWA prays for an order of this Court

authorizing the payment of the fees set forth herein and the allowance of such payments as a credit in the final accounting to be filed herein by the Administrator.

WINTERS NATIONAL BANK AND TRUST CO.

By _____
Administrator DBN WWA

_____

ROBERT B. CREW
Cowden, Pfarrer, Crew & Becker
2580 Winters Bank Tower

The undersigned, Winters National Bank and Trust Co. as Trustee under Revocable Living Trust Agreement entered into July 1, 1975, with William Kuntz and the sole legatee under the Last Will and Testament of William Kuntz hereby consents to the allowance of fees as set forth in the foregoing application.

Dated this 15th day of October, 1982.

WINTERS NATIONAL BANK AND TRUST CO.,
Trustee under Revocable Living Trust Agreement

By _____

Filed

Oct 20, 1982
2:03 P.M.

Montgomery
County

In the

Common Pleas Court of Montgomery County, Ohio

Probate Division

Case No. 231191 Docket 290, Page 179

In the Matter of the Estate of:

WILLIAM KUNTZ, Deceased

ORDER FOR ALLOWANCE OF FEES

This cause came on to be heard on the Application of Winters National Bank and Trust Co., Administrator DBN WWA of the Estate of William Kuntz, deceased, for an order of this Court authorizing the payment of Executors' and Administrator's fees and counsels' fees in connection with the administration of the Estate and on the statements of claimants for fees.

Upon consideration thereof, the Court finds that services have been rendered in the administration of the Estate as set forth by claimants, that the amount of the fees claimed is supported and that they are fair and reasonable in accordance with statements made by claimants, that payment thereof should be authorized and the administrator be entitled to claim credit for their payment upon the next accounting filed herein.

It is, therefore, ordered that the following fees be paid from the assets of the Estate by Winters National Bank and Trust Co. as Administrator DBN WWA of the Estate of William Kuntz, deceased;

Paul W. Heintz
Executor's Fee $4,634.32

Estabrook, Finn & McKee Counsel to Paul W. Heintz	$ 6,935.16
James T. Lynn Attorney's Fee	$ 5,000.00
Winters National Bank and Trust Co. Administrator's Fee	$20,000.00
Robert B. Crew Counsel to Administrator Attorney's Fee	$12,000.00

Judge

Attorneys for Administrator

Filed

Oct 20, 1982
2:0[illegible].M.

Montgomery
County

A. The federal estate tax return was prepared and filed by Mr. Heintz.

Q. Did you sign the return?

A. No.

Q. Was it presented for your signature?

A. No, not in form. We had two days of rather extended discussion whether to take an extension or whether to file the return I chose because of the valuation problems to seek an extension. It is possible under certain provisions of the Internal Revenue Code we might be able to elect what is a 6166A election, which might allow deferred payment of up to fifteen years at four percent interest to pay the estate tax obligation. These things I feel should be inquired into in a depth that would satisfy me and satisfy I.R.S. The present cash value versus a fifteen year payout at four percent interest is substantial.

Q. Did Mr. Lynn request that you sign the estate tax return?

A. No, I don't believe he did so.

Q. Did Mr. Heintz request you to sign it?

A. No. I believe the way we left it in early December was that I had obtained an extension and Mr. Heintz was filing the return.

EXAMINATION BY MR. ZIPPERSTEIN:

Q: Mr. Kuntz, Would you explain your answer with regard to the possible savings for the extate or increase in income for the estate of approximately $400,000.00 over a fifteen year period and how you arrive at that computation?

A: May I use the board?

Q: You certainly may.

A: (Using blackboard) This is my understanding. You would have, depending on how I.R.S. treats this 6166A for closely held stock interest which comprises about five different standards I.R.S. applies to see if you qualify. The two terms are (1) you pay no tax for five years; then you pay one-tenth of the tax due here in ten percent installments, and I believe that is four percent interest. That may be adjustable at the time by I.R.S. The other one is a simple ten year pay-out at one-tenth and these are elections for closely held business interests. The calculation is simple. Say you have $500,000.00 and say it earns sixteen percent interest. If this is tax free interest you get now a difference of $400,000.00 for $60,000.00 income over fifteen years, which would be $900,000.00 additional income to the estate. This would be subject to federal estate income tax. Eleven and a half percent tax free, you would have a seven and a half split on $500,000.00 over ten or fifteen years which would be $35,000.00 a year tax free to the estate if you qualifty under these two sections of the I.R.S. code. I don't know if we can qualify. We don't have those financial statements from the company. It takes those financial statements.

Q. Have you discussed this with Paul Heintz, co-executor?

A: Yes.

Q: Has he indicated to you catagorically the estate would not qualify?

A: Generally, yes.

Q: Your testimony is that that is a matter which could not be determined until say more or less there are new evaluations of the Peter Kuntz Company and affiliated companies to determine what their true value is for the federal estate tax purpose, is that correct?

A. Yes.

Q. You have testified that the figures in the inventory for the Peter Kuntz Company were as of figures in 1979. What particular date in 1979? What was the year end of the Peter Kuntz Company in 1979?

A. October 31, 1979.

William Kuntz, III **Vol. 1** **Pg 46**

MR. ZIPPERSTEIN: (Continuing) Do you have any idea, Mr. Kuntz, as to why Winters National Bank, in their application for your removal filed September 11, 1980, should make an allegation that you neglected or refused to sell shares of various lumber companies at the appraised value when in fact the offer from Martin Kuntz for you to sell those stocks from the estate was not made until September 23, 1980?

William Kuntz, III - Direct Examination Vol. II Pg 28, 29

Q. With reference to Exhibit A, the account, your objection number 11 refers to Winters Bank not availing itself of the feasible tax treatment of IRS regulations in regard to the estate. In what form or reference to Exhibit A is your objection there, Mr. Kuntz?

A. It relates to payments to IRS.

Q. In what regards or aspects are you referring to, sir?

A. Considerable amount of the assets of the probate estate consist of stocks in closely held corporations of PK Company and various subsidiaries or affiliated companies. There is some market for some purpose but generally not a public maket for this stock. As such there is provision in the IRS code, being generally 6166, et seq. which allows for deferred federal estate tax payments in ratio to closely held stock or assets of the estate, allowing deferral of payment from ten to fifteen years in IRS charges at 4% interest on that. As reflected on this Exhibit A the tax liability runs into several hundreds of thousands of dollars. And at the time the tax treatment afforded by IRS that is allowing the deferral if payment of a large percent of the estate taxes and then being insolvent at 4% percent interest where you can obtain the entire amount of money at great savings to the estate over a fifteen year period. The figure could be from four to nine hundred thousand dollars. This was not done by the Bank.

William Kuntz, III — Direct Examination Vol. II Pg 30

A. I believe that it must be referred to generally in the amounts of cash receipts on page 7, printout page 8, of the documents sums of 50 and 40 and 62,000 that were received to the best of my knowledge from the sale of tax free bonds held in the estate, and these bonds were sold at a substantial discount and resulted in a loss of principal to the estate and trust and money reinvested has a less than competitive rate of interest. As

previously testified there were sufficient other cash assets available to the estate. No reason I can possibly see taking a loss on selling securities of 30 and 40 thousand dollars to merely reinvest the money with Winters Bank money express funds as that amount would be taxable under the federal estate (income) tax and tax free bonds would not be subject to any income tax and if held to maturity would recoup any discount that sold at market.

Q. Mr. Kuntz, as reflected in Exhibit A, if you can relate it to this proceeding, objection 15 refers to the bank acting improperly as trustee in that it received four million in settlement of the sale of North Central Mortgage Company to the detriment of the estate, the trust and the beneficiaries of said trust. In reference to where it was shown and referred to in Exhibit A, tell the Court what your objection is there, sir.

A. The deceased, William Kuntz, Sr., was the former president of Peter Kuntz Company and founder and chairman of North Central Financial Corporation which at the time of the demise was the fastest growing (mortgage) company in the state of Ohio and represented the fourth largest. Winters Bank as lead banker led a syndication of banks which make funds available to North Central for the purpose of buying and reselling VA and FHA loans which is considered Gennymae (Ginnie Mae) borrowing. With reference to Exhibit A, page 2 of the print out, page 3 of the documents, Peter Kuntz Company had 7,670 shares, refers to the amount of dividends flow and also refers to delivery of stock as previously testified to in the hearing before Judge Zimmers. This constituted the largest single block of stock in the Peter Kuntz Company. The posture of the bank as administrator, having care and control of this block of stock and the position of the bank in receiving for itself and its own account of seven million dollars as part of the pool of the payment of thirteen million dollars on the sale of North Central Corporation subject. . .

Q: What was the result of that valuation?

A. On the alternate valuation date the municipal bonds were considerably higher than the value submitted with the federal estate return, so , therefore, the alternate valuation date would have brought a higher valuation to the estate.

Q. Would there have been any change in the value of the preferred or subsidiary stocks or common stock?

A. These are not marketable, so I have to answer no, not to my knowledge. There is no market.

MR. ZIPPERSTEIN: What stocks were you referring to in the last question?

MR. GINGER: Preferred, common and subsidiary.

MR. ZIPPERSTEIN: All three?

A. Yes.

MR. GINGER: (Continuing) At the time of filing the federal estate tax return for the estate did you give any consideration to taking an installment payment election, under Internal Revenue Sections 6166 and 6166A?

A. I had heard the section mentioned. I did a limited amount of research myself, as far as these sections are concerned. I talked to Jim Lynn, our attorney.

Q. What opinion did he give you with regard to the election?

A. He felt there was no application.

Q. At the time of the February 5th hearing, during the recess at noon, did you again review that with me during the recess?

A. Yes.

Q. And what opinion did I give you?

A. You gave me the opinion that the section had no application.

Paul W. Heintz **Vol. 1** **Pg 94**

Q. How many shares of the Peter Kuntz common stock do the executor's have? Approximately seven thousand shares?

A. Approximately eight percent.

COURT: Who has eight percent?

A. The executors own approximately eight percent of the parent company, the Peter Kuntz Company.

MR. ZIPPERSTEIN: (Continuing) You would agree with me would you not, Mr. Heintz, that if the earnings per share of the Peter Kuntz Company held by the executors are reduced from the value of $20.38 per share to $4.68 per share, that should be a matter of concern to the executors?

A. No.

Paul W. Heintz **Vol. 1** **Pg 126**

Q. You were also aware that it wasn't necessary for the appraisers to use the same basis in reaching their appraisal if they got the alternate valuation as they did when they set their value in the original return?

A. They were court appointed, right?

Q. Therefore, they could have used, as you are well aware, a five year averaging rather than a ten year average and I.R.S. does accept that.

A. I.R.S. yes, and I think everybody should be aware of that. We use this figure for filing the return. The final determination is made by Internal Revenue, not by the court appointed panel.

Q. The fact is that you did not give I.R.S. an opportunity to arrive at an agreement as to an alternate valuation that you and William Kuntz (III) and the appraisers might come up with or you and William Kuntz (III), as co-executors, might come up with, isn't that correct? I.R.S. had no opportunity to agree or disagree with any alternate valuation, isn't that so?

A. That's so.

Q. And they had not that opportunity because you elected to file the return December 5, 1980?

A. At that time there was in effect IRS Section 6166 and 6166A. Those sections provided for a deferral of the payment of the estate tax attributable to the interest in closely held businesses which were being taxed in the estate. The computation is you take the value of the closely held business, you divide that by the gross estate and you multiply the result times the estate tax. That tax can be paid over a period of ten years. Inaddition the interest which is to be applied to that liability was computed at that time at the rate of four percent.

Q. Based upon your background and experience in tax, working with estates, what does this allow the estate to do, if such an alternative is taken?

A. Well, you can keep the estate open. You can take whatever in the estate is liquid, invest it, at that time a minimum of five or six percent, whatever the going interest rates were at that time, and meanwhile the cost of that money is four percent. Inaddition by keeping the estate open there is a planning opportunity of using the estate as a separate tax payer instead of having income deposited and based upon this beneficiary who may be in a high bracket can add that income to their highest bracket. You keep the estate open and it is treated as a separate tax payer, paying its own income tax, depending on the marginal brackets of the beneficiary, it can be a sizeable savings.

William Cohen - Cross-Examination Vol. II Pg 94

Q. Could you explain that to the court.

A. Section 6166 provides what was in effect a fifteen year deferral and there are no payments to be made in the first five years, and a tax payment in the ensuing ten years that tax is somewhat more difficult to qualify.

Q. Why?

A. Because the amount of the estate which is composed of closely held business interests has to be much higher, 65% of the estate.

Q. And what is the rule on the ten year deferred?

A. On the ten year deferral closely held business interests must be 35% of the gross estate, 50% of the taxable estate.

Q. Now, in your professional opinion the estate tax return in this particular case qualified for which treatment?

A. I would have to do a numerical test to determine whether or not 6166 was applicable. It was obvious 6166A did apply. 6166 as opposed to 6166A.

William Cohen - Cross-Examination Vol. II Pg 95

A. Yes. There is a two part test for corporations. If 20% or more of the value of the voting stock is included in determining the gross estate or if the corporation has ten or less shareholders, then that corporation is a closely held business. In addition if there are interests in two or more closely held businesses, then those can be aggregated and treated as one business if the decedent owned more than 50% of the value of each business.

Q. Mr. Cohen, you were asked on cross-examination about family attribution rules. Do you recall that?

A. Yes.

Q. Tell us, is there a difference between, based upon your experience and background, a difference between attribution rules and family attribution rules?

A. Well, there is an attribution rule in 6166A. I should say a so-called attribution rule where interest in corporations, where looking at one corporation 6166A would not apply. But if you aggregate the corporations and call them one business it does apply. The distinction is that there are at least five different attribution rules in the code for various code sections.

Q. This particular attribution rule in section 6166 is of what type of nature?

A. This is no family attribution. This is merely a method of combining business interests into one large business interest.

Q. You were asked on cross-examination about the ten year or fifteen year aspect. Which particular one goes with the ten year and which goes with the fifteen year?

A. The fifteen year deferral is code section 6166. The ten year deferral was code section 6166A.

A. In this particular case we don't believe you even have to aggregate the corporations.

Q. So Peter Kuntz Company standing alone would let you qualify. You would not have to aggregate any others, is that correct?

A. Yes

A. Following that the property was listed with Ed Hilton and Associates. The property was listed July 20, 1981, listing price $195,000.00.

Q. What activity was there while the listing was with Hilton?

A. The first written offer was received the end of August, August 30th, I believe. It was $170,000.00 calling for a purchase money mortgage over a five year period.

Q. Would you tell the court your understanding of a purchase money mortgage?

A. Essentially, it was a whole bag of seller financing techniques at that time. A purchase money mortgage allowed us to have the sale by conveying the deed and taking the mortgage back.

Q. What was the rate in taking the mortgage back?

A. 13%.

Q. What resulted from that offer?

A. The broker and the prospective buyer and myself met. We discussed the fact that the term was too long and that the price we felt was too low. The buyer agreed to increase his offer to $175,000.00 and shorten the loan period to three years. He also offered a $75,000.00 down payment which meant we were carrying $100,000.00 for the three year period at 13%.

Q. And was the property then sold on those terms?

A. We accepted the contract on September 1, 1981.

Q. And then did you subsequently close the transaction?

A. The closing was held on September 30, 1981.

Q. Mr. Naugle, you made reference to this purchase money mortgage that apparently was prevalent at that time. Do you in your experience as a real estate officer for Winters Bank, tell us why the prevalence of the money mortgage type of financing.

A. We have to put in prospective the general conditions in 1981. Our prime rate was approaching 20% again. The prevalent lending rate was 16% on first money mortgage. Real estate market was unsettled. This tier of financing which make payments possible including seller financing represent around thousands of second mortgage—purchase money mortgage. To me this was the best of the alternatives. We did not have an existing mortgage on this house which you assume and pay down the line. Our options were very limited. This was the best alternative we had.

Q. Was the return of 13% on a purchase money mortgage comparable to other rates in other transactions at that time?

A. I made a statement to Mr. Kuntz I thought the administration was taking far too long and the beneficiary of the estate, which was the bank as trustee for the benefit of himself and Mary Ann Dillon, would be damaged by the fact that it was being kept open.

Q. Did you ever make the statement to Mr. Kuntz, III, these words or words to the effect one of my main concerns is the ease of administration?

A. I don't believe so.

Q. Talking about the estate being open, you were referring to the fact of having the estate closed, terminated, so that there were no loose ends handing on for years at a time. Is that what you were referring to?

A. I am referring to the fact that the estate tax return had been filed at the twelfth hour and no taxes paid and the house was sitting vacant and costing the estate hundreds of dollars a month in maintenance costs. That's what I was speaking to.

Q. Now, Mr. Kuntz and you had had a conversation regarding use of Section 6166 of the IRS Code had you not?

A. Yes, sir.

Q. He had brought this to your attention had he not?

A. Yes.

Q. Did you make the statement to him these words or words to the effect that you did not feel that applied?

A. Yes, sir.

Q. Did you check that out? You had obtained Mr. Crew and his firm?

A. I checked with Mr. Crew and also our tax department.

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Q. Now, other moneys were available for the purpose of federal estate tax was it not, besides the selling of these assets?

A. There was cash in the life insurance trust that could have been moved to the estate to pay some of those things, yes. Eventually it was.

Q. Insurance money was available as a result of the death of Mr. Kuntz, too, wasn't it?

A. Yes.

Q. That was approximately two hundred twenty thousand wasn't it?

A. Yes, sir.

Q. Were you involved in the application for that money?

A. Yes, sir.

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Q. Can you tell me from the insurance fund you refer to and the amount of it the estate had coming, did you ever contemplate prepayment of the estate tax to cut off interest running?

A. We did pay as funds became available. We felt it was important to keep some money in the trust mainly for the one beneficiary who was living off the income received from the proceeds.

Q. Who was that beneficiary?

A. Mary Ann K. Dillon.

Q. Insurance money was not used to prepay the tax?

A. No, it was not used to prepay tax.

Q. Was it used to make distribution to Mary Ann Dillon?

A. Some of the proceeds that went into her trust were loaned to Mary Ann Dillon for the purchase of a home in California.

Q. Wasn't there, from your understanding of the will, document suggested this estate – the purpose of the insurance money was for the funding of the estate and payment of such things as the taxes?

A. Part of it was. Part was used for that. Selling of the mortgage from the estate to the trust generated proceeds from the funds received from the insurance policy.

A. Correct. Pg. 198, 199, 200

Q. As I recall Mr. Cohen's testimony, he stated that in the event of a deficiency the election under Section 6166 would be available within sixty days after notice of the deficiency in the subject estate. In this estate we are concerned with of William Kuntz, was there a deficiency?

A. No, there was no deficiency assessment in this estate.

Q. If there is no deficiency assessment, when must the election be made?

A. The election must be filed at the time of filing or before the filing the federal estate tax return.

Q. Was there an election to defer tax made at the time that the federal estate tax return was filed in this case?

A. No, there was not.

Q. Now, with regard to the election to transfer taxes, it is my recollection of Mr. Cohen's testimony earlier today that this estate would have qualified to make such an election and that had such an election been made the estate would have paid four percent interest, it could have been kept open for ten years and funds reinvested in whatever the current rate was. That is my recollection of his testimony. Now, with regard to the applicability of this section we are referring to, assuming that the estate would qualify, would you explain to the Court how this section applies?

A. Well, there are sections 6166 and 6166A. 6166 is a fifteen year deferred payment that recognizes that the asset, closely held corporation, some single asset, constitutes 65% of the gross estate. There are also other requirements in connection with that. That is that you – the person must own – the decedent must own twenty percent of the stock of the corporation or there must be

fewer than fifteen shareholders. That is to qualify. And in this case and also this estate, he did not have twenty percent. But you can fill that void—he had about eight or nine percent of the stock of Peter Kuntz. You could fill that void by attribution. If you use attribution you are not eligible more than a five year delay for a five percent investment payment. Then you must go to 6166A which provides a ten year investment period. The first part is due when you file the return and interest at the going rate of I.R.S. which in this case in December was twelve percent—December 5, 1980, twelve percent. February 1, 1981 interest jumped to twenty percent which would have to remain in effect until the next change in the rate. This would have been economically unwise if we had qualified, if we had elected. That would not have been a wise move economically.

Q. Now, I would like for you to turn to objection to the partial account number 15, and this says that Winters National Bank acted improperly as trustee in that the bank received $4,000,000.00 in settlement of the sale of North Central Mortgage Company, to the detriment of the estate, the trust and the beneficiaries of said trust, as set forth in the affidavit of William Kuntz, III. Now, Mr. Swisher has already testified as trustee the bank had no involvement in this transaction. Do you have knowledge of the bank's involvement in this transaction as the bank as distinguished from the trust department?

A. I have some knowledge and the reason I have and the way I get this knowledge is that I am consulted from time to time on matters which refer to mortgage banking loans, and North Central represents a mortgage banker.

Q. Was there anything improper in the transaction with regard to the estate or any other matter?

A. The bank had nothing to do with the transaction but collecting money that was owed to them.

Q. And you were present when I asked certain questions of Mr. Swisher this afternoon were you not?

A. I was.

Q. And your firm and yourself are involved in representing the bank in other capacities are you not?

A. We do other work for the bank.

Q. In what area?

A. Security lending, principally in mortgage lending.

Q. There was testimony in regards to the Third National Bank acquiring of the North Central Mortgage Company?

A. That's correct.

Q. And after this was accomplished did this result in a loss of book value to the Peter Kuntz stock?

Q. Peter Kuntz? Pg. 218, 219

A. Peter Kuntz Company that were owned by Bill Kuntz.

Q. Showing you what has been – what is your affidavit with is part of the objections to partial account signed by you the 21st day of February 1983, does that affidavit represent your statement as to what took place regarding appraisal of stock?

Y. Yes.

Q. Did you participate in any appraisal of the preferred stock?

A. No.

Q. On the inventory filed there is a signature of – in the same area of David Reese, Thomas Gilfoil and yourself. Did you know if the other appraisers participated in any of the appraisals of the preferred stock?

A. I don't know that they did.

Q. You have no knowledge of it?

A. No.

Q. On the inventory and appraisement filed August 22, 1980, the schedule of assets there is an X under appraisal for preferred and some common stock on the subsidiary. Did you participate in that appraisal?

A. Only the 7,670 shares of common stock.

Q. Do you have knowledge if the appraiser whose signature appears on the front of that document – as to where the figures for the preferred and common stock of the other companies came from?

A. I don't believe so.

Q. Who made the presentation to you appraisers regarding the common?

A. Initially it was Paul Heintz who was an officer of the company – Treasurer, I believe.

Q. Where was that done at?

A. In the home office downtown here.

Q. The Company's office?

A. Yes.

MR. KIRKLAND: Nothing further.

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In the

Common Pleas Court of Montgomery County, Ohio

Vicki D. Pegs
Recorder

ASSIGNMENT OF MORTGAGE

Mortgager:	William F. Wesig and Margie E. Wesig
Amount Secured:	$100,000.00
Dated:	September 30, 1981
Filed:	September 30, 1981
Recorded:	Microfiche 81-871-D11

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, for a valuable consideration, does hereby assign, transfer and set over all right, title and interest in and to the above-referenced mortgage to Winters National Bank and Trust Company, Trustee, whose mailing address is Winters Bank Tower, Dayton, Ohio 45401.

Dated this 13th day of August, 1982.

Executed in the presence of:

WINTERS NATIONAL BANK AND TRUST COMPANY
Administrator De Bonis Non With Will Annexed of the Estate of WILLIAM KUNTZ, Deceased

_____

_____

By _____
Vice President

STATE OF OHIO)
ss.
COUNTY OF MONTGOMERY,)

Before me, a Notary Public in and for said County and State, personally appeared the above-named L. D. Kneisly, Vice President of Winters National Bank and Trust Company, Administrator De Bonis Non with Will Annexed of the Estate of William Kuntz, Deceased, and acknowledged the signing of said instrument to be the voluntary act and deed of said corporation as such administrator for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal this 13th day of August, 1982.

ROBERT B. CREW
ATTORNEY AT LAW

_____
Notary Public

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Form 843

(Rev. December 1983)

Claim

Department of the Treasury ► See Instructions on back.

Instructions

If you are filing the claim as a legal representative for a decedent whose return you filed, attach to the claim a statement that you filed the return and are still acting as the representative. If you did not file the decedent's return, attach to the claim certified copies of letters testamentary, letters of administration, or similar evidence to show your authority.